

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BERNARD WAITHAKA, on behalf of  
himself and all others similarly situated,

Plaintiff,

v.

AMAZON.COM, INC., AMAZON  
LOGISTICS, INC.,

Defendants.

No. C19-01320-RSM

ORDER GRANTING DEFENDANTS'  
MOTION TO EXTEND STAY

**I. INTRODUCTION**

This matter comes before the Court on Defendants Amazon.com, Inc. and Amazon Logistics, Inc. (collectively, "Amazon")'s Motion to extend stay pending the U.S. Supreme Court's decision on Defendants' petitions for writ of certiorari. Dkt. #84. Plaintiff Bernard Waithaka opposes Amazon's motion. Dkt. #87. The Court finds oral argument unnecessary to rule on the issues. Having reviewed Defendants' motion, Plaintiff's response, and the remainder of the record, the Court GRANTS Defendants' motion.

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ORDER GRANTING DEFENDANTS'  
MOTION TO EXTEND STAY- 1

## II. BACKGROUND

### A. Factual Background

Plaintiff Waithaka is an Amazon Flex (“AmFlex”) delivery driver for Amazon. Amazon historically used third-party delivery providers like FedEx and UPS to deliver its products but recently began using independent contractors for delivery services for the last mile of the order. These “last mile” delivery drivers, like Plaintiff, use the AmFlex smartphone application to sign up for delivery shifts and use their own methods of transportation, such as a private vehicle, to deliver products subject to Amazon’s service standards. Contractors are paid an hourly rate for their shifts but are not compensated for additional time needed to complete all their deliveries, nor are they reimbursed for gas, vehicle maintenance, or cellphone data expenses.

To work as an AmFlex driver, contractors like Plaintiff must download the AmFlex app and agree to the AmFlex Independent Contractor Terms of Service (“Agreement”). Section 11 of the Agreement provides, in part, that the Federal Arbitration Act (“FAA”) and applicable federal law “will govern any dispute that may arise between the parties.” Dkt. #31-2 at 10. In a separate section, the Agreement states that “interpretation of this Agreement is governed by the law of the state of Washington without regard to its conflict of laws principles, except for Section 11 of this Agreement, which is governed by the Federal Arbitration Act and applicable federal law.” *Id.* at 15.

### B. Procedural Background

Plaintiff brought this action against Defendants in Massachusetts state court alleging (1) misclassification of AmFlex drivers as contractors; (2) violation of the Massachusetts Wage Act; and (3) violation of the Massachusetts Minimum Wage Law. Dkt. #1-1. Amazon removed

1 the action to the U.S. District Court for the District of Massachusetts. Dkt. #1. Amazon then  
2 moved to compel arbitration or, in the alternative, to transfer or stay the case. Dkt. #29.

3 On August 20, 2019, Judge Hillman of the District of Massachusetts granted in part and  
4 denied in part Amazon's motion, concluding that a transfer to the Western District of  
5 Washington was proper but denying Amazon's motion to compel arbitration. Dkt. #59. On the  
6 arbitration issue, Judge Hillman concluded that Plaintiff and those similarly situated fall within  
7 the FAA's transportation worker exemption, 9 U.S.C. § 1, that Massachusetts law therefore  
8 governed the enforceability of the arbitration provision, and that the provision was  
9 unenforceable based on Massachusetts public policy. *Waithaka v. Amazon.com, Inc.*, 404 F.  
10 Supp. 3d 335, 343, 346, 348 (D. Mass. 2019). Amazon appealed Judge Hillman's ruling on the  
11 FAA transportation worker exemption to the U.S. Court of Appeals for the First Circuit.  
12

13 On July 17, 2020, the First Circuit affirmed the district court's holding as to the scope  
14 of 9 U.S.C. § 1, agreeing that the FAA transportation worker exemption encompasses the  
15 contracts of transportation workers, like Plaintiff, "who transport goods or people within the  
16 flow of interstate commerce, not simply those who physically cross state lines the course of  
17 their work." *Waithaka v. Amazon.com, Inc.*, 966 F.3d 10, 13 (1st Cir. 2020). On September 1,  
18 2020, the First Circuit denied Amazon's petition for rehearing en banc. *See Waithaka*, No. 19-  
19 1848 (1st Cir. Sept. 1, 2020).  
20

### 21 **C. Rittmann Litigation**

22

23 A group of AmFlex delivery drivers brought a separate action against Defendants in the  
24 U.S. District Court for the Western District of Washington before Judge Coughenour, alleging  
25 misclassification of AmFlex drivers as independent contractors. Amazon moved to compel  
26 arbitration pursuant to the Agreement. The district court denied Amazon's motion to compel

1 arbitration on the basis that plaintiffs fell within the FAA’s transportation worker exemption,  
 2 which the Ninth Circuit affirmed. *Rittmann v. Amazon.com, Inc.*, 383 F. Supp. 3d 1196 (W.D.  
 3 Wash. 2019), *aff’d*, 971 F.3d 904 (9th Cir. 2020). Judge Bress dissented with the majority’s  
 4 interpretation of “engaged in foreign or interstate commerce” under 9 U.S.C. § 1 on the basis  
 5 that a delivery worker must belong to a “class of workers” that crosses state lines in order to  
 6 qualify for the FAA’s transportation worker exemption. *Rittman*, 971 F.3d at 921 (J. Bress,  
 7 dissenting). Amazon filed a petition to the Ninth Circuit for a rehearing en banc, which was  
 8 pending at the time Amazon filed the instant motion.

#### 10 **D. Motion to Extend Stay**

11 Amazon moves to extend the stay of this case while awaiting (1) the Supreme Court’s  
 12 ruling on Amazon’s forthcoming petition for a writ of certiorari in *Waithaka*; and (2) the Ninth  
 13 Circuit’s ruling on Amazon’s petition for rehearing in *Rittmann*. After Amazon filed the instant  
 14 motion, the Ninth Circuit denied rehearing en banc, *see Rittmann*, No. 19-35381, (9th Cir. Sept.  
 15 25, 2020), Dkt. #70, and Amazon filed a petition for a writ of certiorari that is now pending  
 16 before the U.S. Supreme Court. *See id.*, *petition for cert. filed*, No. 20-622 (U.S. Nov. 4, 2020).  
 17 Accordingly, the only basis for Amazon’s motion to extend the stay is the Supreme Court’s  
 18 decision on its forthcoming and pending petitions for certiorari in *Waithaka* and *Rittmann*.  
 19

### 20 **III. DISCUSSION**

#### 21 **A. Legal Standard**

22 Whether to stay a lawsuit is within this Court’s discretion. *Lockyer v. Mirant Corp.*, 398  
 23 F.3d 1098, 1105 (9th Cir. 2005). In considering a stay request, courts weigh the competing  
 24 interests that will be affected:  
 25

26 //

1 the possible damage which may result from the granting of a stay,  
2 the hardship or inequity which a party may suffer in being  
3 required to go forward, and the orderly course of justice  
4 measured in terms of the simplifying or complicating of issues,  
proof, and questions of law which could be expected to result  
from a stay.

5 *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962). “[I]f there is even a fair possibility that  
6 the stay . . . will work damage to some one else,’ the party seeking the stay ‘must make out a  
7 clear case of hardship or inequity.’” *Lockyer*, 398 F.3d at 1105 (quoting *Landis v. N. Am. Co.*,  
8 299 U.S. 248, 255 (1936)). “The proponent of a stay bears the burden of establishing its need.”  
9 *Clinton v. Jones*, 520 U.S. 681, 708 (1997).

10  
11 Here, Amazon seeks a stay pending the U.S. Supreme Court’s decision on its petitions  
12 for writ of certiorari. In this situation, the Supreme Court has provided criteria to consider when  
13 determining whether a stay is appropriate. “[J]udges of the lower courts [ ] apply the same  
14 criteria” as the Supreme Court. *United States v. Holland*, 1 F.3d 454, 456 (7th Cir. 1993). An  
15 applicant seeking a stay must demonstrate: “(1) a reasonable probability that four Justices  
16 would vote to grant certiorari; (2) a significant possibility that the [Supreme] Court would  
17 reverse the judgment below; and (3) a likelihood of irreparable harm, assuming the correctness  
18 of the applicant’s position, if the judgment is not stayed.” *Packwood v. Senate Select Comm.*  
19 *on Ethics*, 510 U.S. 1319 (1994) (Rhenquist, J., in chambers) (citing *Barnes v. E-Systems, Inc.*  
20 *Group Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1302 (1991) (Scalia, J., in chambers)).  
21 In addition to considering these factors, courts must “balance the equities—to explore the  
22 relative harms to applicant and respondent, as well as the interests of the public at large.”  
23 *Barnes*, 501 U.S. at 1305.  
24  
25

26 //

1       **B. Authority to Issue a Stay**

2           As an initial matter, Plaintiff argues that this Court lacks authority to stay the case under  
 3 28 U.S.C. § 2101(f) pending the Supreme Court’s disposition of Amazon’s certiorari petitions.  
 4 Dkt. #87 at 6-7. However, as Amazon correctly points out, it is not moving to stay an appellate  
 5 mandate or enforcement of a judgment under Section 2101. *See* 28 U.S.C. § 2101(f). Rather,  
 6 Amazon moves to stay trial court proceedings pursuant to this Court’s “inherent power” to  
 7 control its docket. Dkt. #88 at 6 (citing *Clinton*, 520 U.S. at 706-07; *Lockyer v. Mirant Corp.*,  
 8 398 F.3d at 1109).

10          The Court agrees with Amazon. While district courts are not routinely presented with  
 11 motions to stay due to pending certiorari petitions, several have considered the issue pursuant  
 12 to their inherent power to manage their own dockets. *See, e.g., Fletcher v. Losh*, No. 1:15-CV-  
 13 00029-REB, 2019 WL 4453703, at \*3 (D. Idaho Sept. 17, 2019); *Bryant v. Jones*, No. 1:04-  
 14 CV-2462-WSD, 2010 WL 11482535, at \*1 (N.D. Ga. Feb. 2, 2010); *United States v. Mandycz*,  
 15 321 F. Supp. 2d 862 (E.D. Mich. 2004). Consistent with these cases, this Court finds that it has  
 16 sufficient authority to issue a stay in this matter.

18          Having resolved this preliminary issue, the Court will now analyze whether a stay is  
 19 warranted.

20       **C. Analysis of *Packwood* Factors**

21           For the Court to grant a stay, Amazon must demonstrate (1) a reasonable probability  
 22 that four Justices will vote to grant certiorari; (2) a significant possibility that the Supreme Court  
 23 will reverse the First and Ninth Circuits; and (3) a likelihood of irreparable harm, assuming the  
 24 correctness of Amazon’s position, if the judgment is not stayed. *Packwood*, 510 U.S. 1319.  
 25 Amazon bears the burden to show that each of these factors is met. *Clinton*, 520 U.S. at 708.  
 26

i. Probability of Granting Certiorari

It is well-established that the Supreme Court rarely grants certiorari. *See* Margaret Meriwether Cordray & Richard Cordray, *The Calendar of the Justices: How the Supreme Court's Timing Affects its Decisionmaking*, 36 Ariz. St. L.J. 183, 204 (2004) (Observing that Court granted, on average, 1.19% of the petitions for certiorari that it reviewed). Pursuant to Supreme Court rules, review on a writ of certiorari “is not a matter of right, but of judicial discretion.” Sup. Ct. R. 10. Rule 10 sets forth several circumstances in which the Supreme Court may consider granting a writ, including:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

...

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Sup. Ct. R. 10.

Here, Amazon argues it is likely to succeed in seeking review by the Supreme Court due to (1) a circuit split on the issue of whether AmFlex workers involved in “last mile” transport may qualify for the arbitration exemption; and (2) conflict between Supreme Court precedent and the *Waithaka* and *Rittman* decisions. The Court will address each argument in turn.

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1 First, Amazon argues that conflict between the courts of appeals creates a “greater than  
2 usual likelihood” that the Supreme Court will grant certiorari. Dkt. #84 at 7 (Citing Sup. Ct. R.  
3 10(a)). The Supreme Court’s rules define a “circuit split” warranting certiorari as a  
4 disagreement between circuit courts that is severe enough to the point that one court of appeals’  
5 decision is “*in conflict with* the decision of another United States court of appeals on the same  
6 important matter . . . .” S. Ct. R. 10 (emphasis added). For the reasons set forth below, the  
7 Court does not find “reasonable probability” that certiorari will be granted based on a circuit  
8 split.  
9

10 On the narrow issue of whether AmFlex drivers are exempt from the FAA, both courts  
11 that have considered this issue reached the same conclusion. *See Waithaka*, 966 F.3d 10  
12 (Transportation worker exemption applies to AmFlex drivers); *Rittmann*, 971 F.3d 904 (same).  
13 Since Amazon filed this motion, the Ninth Circuit denied rehearing en banc in *Rittman*.  
14 Consequently, there is no circuit split on the specific issue of whether the FAA transportation  
15 worker exemption applies to AmFlex drivers.  
16

17 In light of the consistent rulings in *Rittman* and *Waithaka*, Amazon poses a broader  
18 question to this Court of whether other circuit courts have applied standards different from those  
19 applied in *Waithaka* and *Rittman* when analyzing whether employees are subject to the FAA  
20 transportation worker exemption. Specifically, Amazon argues that the First and Ninth Circuits  
21 have read 9 U.S.C. § 1 to encompass workers who transport goods in localized intrastate  
22 commerce, so long as interstate transportation by other workers is involved at some point,  
23 whereas the Third, Fifth, Sixth, Seventh, and Eleventh Circuits require that employees transport  
24 goods or persons across state lines in order to be engaged in “interstate commerce” for purposes  
25 of qualifying for the exemption. *Id.* (comparing *Waithaka, Inc.*, 966 F.3d at 13; *Rittmann*, 971  
26



1 F.3d 904 *with Singh v. Uber Techs. Inc.*, 939 F.3d 210 (3d Cir. 2019); *Eastus v. ISS Facility*  
 2 *Servs., Inc.*, 960 F.3d 207 (5th Cir. 2020); *Asplundh Tree Expert Co. v. Bates*, 71 F.3d 592 (6th  
 3 Cir. 1995); *Wallace v. Grubhub Holdings, Inc.*, 970 F.3d 798 (7th Cir. 2020); *Hill v. Rent-A-*  
 4 *Center, Inc.*, 398 F.3d 1286 (11th Cir. 2005)). Amazon contends that this inter-circuit conflict  
 5 is evidenced by (1) the Ninth Circuit’s recent decision in *Grice*, 974 F.3d 950; and (2) Judge  
 6 Bress’ dissent in *Rittman*, which identified conflict with *Wallace* and *Singh*. Dkt. #84 at 13.  
 7 Having reviewed the Ninth Circuits’ decisions in *Grice* and *Rittman*, the Court finds that neither  
 8 supports a “reasonable probability” that the Supreme Court will grant certiorari based on a  
 9 circuit split.  
 10

11 In *Grice*, the Ninth Circuit did not identify a conflict with its earlier decision in *Rittman*  
 12 or the First Circuit’s holding in *Waithaka*. On the contrary, it merely distinguished the nature  
 13 of the work performed by Uber drivers compared to AmFlex drivers. *See Grice*, 974 F.3d at  
 14 957 (“*Waithaka*’s holding was limited to the § 1 exemption status of AmFlex drivers, not gig-  
 15 economy drivers in general . . . Our recent decision in *Rittman* confirms this conclusion. . . . On  
 16 this record, we cannot say that Uber drivers perform, or are hired to perform, a similar function  
 17 to AmFlex workers.”). Despite the Ninth Circuit’s effort to distinguish *Waithaka* and *Rittman*  
 18 from *Grice*, Amazon insists that the panel “admitted that the district court ruling it upheld was  
 19 ‘in tension’ with *Waithaka* and *Rittman*.” Dkt. #84 at 13 (citing *Grice*, 974 F.3d at 957). The  
 20 Court disagrees. The full excerpt from *Grice* reads:  
 21  
 22

23 Grice notes that the district court also found it significant that he  
 24 transported passengers, as opposed to goods, and that he never  
 25 personally crossed state lines. But *to the extent these findings are*  
 26 *in tension* with cases such as *Singh*, *Waithaka*, *Rittman*, and  
*Rogers*, which emphasized the interstate nature of an employer's  
 business as the critical factor for determining whether a worker  
 qualifies for the § 1 exemption, Grice has still not shown that he

1 is entitled to mandamus relief.

2 *Grice*, 974 F.3d at 957 (emphasis added). Here, *Grice* merely acknowledges the possibility of  
3 tension between the district court’s analysis and other FAA Section 1 cases. It does not support  
4 the more drastic position advocated by Amazon that a clear circuit split exists.<sup>1</sup>

5 Turning to the *Rittman* dissent, the Court likewise finds minimal support for Amazon’s  
6 argument that certiorari is “reasonably possible” based on a circuit split. Amazon relies on  
7 Judge Bress’ dissent as an indication of “real disagreement” among the Courts of Appeal. Dkt.  
8 #88 at 7 (internal quotations omitted). However, Amazon points to no other circuit that has  
9 agreed with the Bress dissent and rejected the majority opinion, as a circuit split requires. *Cf.*  
10 *NGV Gaming, Ltd. v. Harrah’s Operating Co.*, No. 04-3955 SC, 2008 WL 4951587, at \*1 (N.D.  
11 Cal. Nov. 18, 2008) (Finding a “possible circuit split” in light of “a recent decision by the  
12 Second Circuit agreeing with the dissent and rejecting the majority in the Ninth Circuit’s  
13 decision”). Consequently, the Court finds Judge Bress’ dissent insufficient, on its own, to  
14 support a “reasonable probability” that certiorari will be granted based on a circuit split.  
15

16 Next, Amazon argues that certiorari is likely given the First and Ninth Circuits’  
17 inconsistency with Supreme Court precedent on an important question of federal law. Dkt. #84  
18 at 13-15 (citing Sup. Ct. R. 10(c)). Amazon argues that the Supreme Court is likely to grant  
19 certiorari given that the First and Ninth Circuits’ decisions in *Waithaka* and *Rittman* conflict  
20 with Supreme Court precedent in (1) *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001);  
21 (2) *Lightfoot v. Cendant Mortg. Corp.*, 137 S. Ct. 553, 563 (2017); and (3) *McDermott Int’l*,  
22

23  
24  
25  
26 <sup>1</sup> The Seventh Circuit in *Wallace* took a similar approach to *Grice*, where it approvingly cited *Waithaka*,  
*Singh*, *Hill* and *Asplundh* and distinguished the facts of each case without identifying any conflict with  
its sister circuits’ holdings. See *Wallace*, 970 F.3d at 802, n.2.

1 *Inc. v. Wilander*, 498 U.S. 337, 348 (1991). Because the Court finds conflict with *Circuit City*  
2 dispositive of the issue, it need not address *Lightfoot* and *McDermott*.

3 Amazon argues that *Circuit City* focused on “whether the § 1 exemption applied *only* to  
4 transportation workers (as opposed to all workers)” whereas the First and Ninth Circuits  
5 “focused on whether there are ‘transport[ed] goods or people *within* the flow of interstate  
6 commerce.”” Dkt. #84 at 14 (emphases in original) (quoting *Waithaka*, 966 F.3d at 13).  
7 Plaintiff counters that both *Waithaka* and *Rittman* “cited *Circuit City* numerous times, and duly  
8 considered its principles.” Dkt. #87 at 13. Indeed, in reaching their decisions, *Waithaka* and  
9 *Rittman* expressly applied the principles set forth in *Circuit City*. *See Waithaka*, 966 F.3d at  
10 17; *Rittmann*, 971 F.3d at 909–10.

11  
12 Notwithstanding the fact that the First Circuit and Ninth Circuit majority addressed  
13 *Circuit City*, one judge on the Ninth Circuit panel agreed with Amazon’s position. Judge Bress  
14 stated in dissent that Amazon’s reading of 9 U.S.C. § 1 was more consistent with the principles  
15 set forth in *Circuit City*, whereas the majority’s approach improperly stretched the  
16 transportation worker exemption beyond the “narrow and precise” construction urged by the  
17 Supreme Court. *See id.* at 928, 931 (“The Supreme Court has cautioned against introducing  
18 ‘complexity and uncertainty [into] the construction of § 1’ because it ‘undermin[es] the FAA’s  
19 proarbitration purposes,’ . . . Amazon’s reading of the FAA is much more consistent with this  
20 objective. The majority’s interpretation, by contrast, foment[s] substantial problems of practical  
21 application and produces inequities among similarly situated workers.”) (J. Bress, dissenting)  
22 (quoting *Circuit City*, 532 U.S. at 123). Considering Judge Bress’ dissent, and the fact that the  
23 Supreme Court has not previously considered the issue of whether AmFlex drivers are exempt  
24  
25  
26

1 from the FAA under 9 U.S.C. § 1, the Court finds “reasonable probability” that certiorari could  
 2 be granted to address a conflict with *Circuit City*.

3 ii. Likelihood of Reversal

4 With respect to likelihood of reversal, the Court acknowledges that the Ninth Circuit  
 5 and First Circuit denied rehearing en banc in *Rittman* and *Waithaka*, respectively. This  
 6 procedural history ostensibly diminishes the likelihood of success at the Supreme Court level.  
 7 Nevertheless, the Court finds that Judge Bress’ dissent, compounded by the novelty of the issue  
 8 on review, raises a sufficiently “significant possibility” of reversal to satisfy the second  
 9 *Packwood* factor. *Packwood*, 510 U.S. 1319.

11 iii. Likelihood of Irreparable Harm

12 Finally, the Court considers the likelihood of irreparable harm Amazon would suffer,  
 13 assuming its position is correct. *See id.* Amazon argues that without an extension of the stay,  
 14 it would be irreparably harmed by the costs of continuing to litigate the dispute—particularly  
 15 given the possibility of a class action. Dkt. #84 at 15-17. The Court finds that this factor  
 16 strongly favors a stay for the reasons set forth below.

18 In cases where an interlocutory appeal of a motion to compel arbitration is pending,  
 19 courts find a stay warranted to prevent “the risk of arbitration becoming moot and the possibility  
 20 of having to litigate a class action.” *Wilson v. Huuuge, Inc.*, No. 3:18-CV-05276-RBL, 2019  
 21 WL 998319, at \*4 (W.D. Wash. Mar. 1, 2019). Plaintiff argues that findings of irreparable  
 22 harm are limited to cases where the movant would incur trial expenses, *see* Dkt. #87 at 12-13,  
 23 but courts have also recognized burdensome discovery as a basis to grant a stay. *See Bradberry*  
 24 *v. T-Mobile USA, Inc.*, No. C 06 6567 CW, 2007 WL 2221076, at \*4 (N.D. Cal. Aug. 2, 2007)  
 25 (“[A] stay would be appropriate when the trial date approaches *or if discovery were*  
 26

1 *burdensome*. . . . The cost of some pretrial litigation does not constitute an irreparable harm to  
2 Defendant.”) (emphasis added). It is undisputed that in a putative class action, as is the case  
3 here, the burdens of discovery “are substantially greater than in an individual arbitration.”  
4 *Kwan v. Clearwire Corp.*, No. C09-1392JLR, 2011 WL 1213176 (W.D. Wash. Apr. 24, 2012).

5  
6 Furthermore, when the pending issue concerns the arbitrability of the dispute, courts in  
7 the Ninth Circuit “have taken a more relaxed approach to stay requests” given the fact that “the  
8 right to arbitrate would be devalued, if not rendered meaningless, if litigation proceeded apace.”  
9 *Cherny v. AT&T, Inc.*, No. CV 09-3625-GW AGRX, 2010 WL 2572929, at \*1 (C.D. Cal. Feb.  
10 8, 2010) (granting stay pending outcome of certiorari petition). Here, denial of the stay could  
11 potentially result in Amazon litigating hundreds of claims on a class-wide basis. Assuming  
12 Amazon’s position is correct, the costs of burdensome class action discovery, including time,  
13 money, and resources, would be unrecoverable.

14  
15 Plaintiff counters that burdensome discovery costs are not compelling reasons to stay  
16 the case, given that “substantial discovery into Amazon’s business practices” would be  
17 necessary regardless of whether Mr. Waithaka is required to arbitrate his claim. Dkt. #87 at 12.  
18 This argument is unavailing, given that discovery would be significantly more burdensome in  
19 a class action against Amazon compared to Mr. Waithaka’s individual claim. *See Del Rio v.*  
20 *Creditanswers, LLC*, No. 10-CV-346 WQH (BLM), 2010 WL 3418430, at \*4 (S.D. Cal. Aug.  
21 26, 2010) (“The difference in litigation expenses between a two-party case and a class action is  
22 substantial.”).

23  
24 Plaintiff also points out that many of the cases Amazon relies upon address irreparable  
25 harm in the context of interlocutory appeals, not petitions for certiorari, which are “materially  
26 different” because the moving party’s varying likelihood of success. Dkt. #87 at 13, n.9. While

1 the likelihood of Amazon prevailing at the certiorari stage is certainly lower compared to the  
2 interlocutory appeal stage, *Packwood* merely requires this Court to determine whether a  
3 “significant possibility” of reversal exists and, if so, to analyze whether irreparable harm exists  
4 “assuming the correctness of the applicant’s position, if the judgment is not stayed.” *Packwood*,  
5 510 U.S. at 1319. Here, the Court has determined that the possibility of reversal exists, and that  
6 Amazon would suffer irreparable harm if improperly forced to litigate hundreds of claims.  
7

8 For these reasons, the Court finds that Amazon has satisfied the third *Packwood* factor.

#### 9 **D. Balance of the Equities**

10 Finally, the Court considers the balance of the equities, including the relative harms to  
11 Plaintiff and Amazon and the public interest. *Barnes*, 501 U.S. at 1305. Regarding the harms  
12 to Plaintiff, the Court is well-aware of the protracted nature of this dispute, which has been  
13 pending for three years, and acknowledges the risk of evidence growing stale as the case  
14 proceeds through various procedural stages. However, while courts have found that lengthy  
15 delays weigh heavily against a stay, the cases relied upon by Plaintiff involve cases that were  
16 pending between four and five years. *See, e.g. Ist Media, LLC v. doPi Karaoke, Inc.*, No. 2:07-  
17 CV-1589 JCM NJK, 2013 WL 1250834, at \*1 (D. Nev. Mar. 27, 2013); *Fletcher*, 2019 WL  
18 4453703, at \*3. This matter, in contrast, has not been pending for that length of time.  
19

20 Moreover, an extension of the stay in this matter would not be “indefinite,” as Plaintiff  
21 contends. *See* Dkt. #87 at 6. Rather, the stay would only last until the arbitration question is  
22 more conclusively resolved, which may happen as soon as February 2021. *See* Dkt. #90 at 2  
23 (Amazon representing that the Supreme Court is scheduled to rule on the *Rittman* certiorari  
24 petition in February). In considering the harms Plaintiff will suffer from further delay,  
25 including stale evidence, unavailable witnesses, and ongoing harm due to unpaid wages, the  
26

1 Court considers the fact that Plaintiff may at any time avoid further delay by proceeding to  
 2 arbitration. In contrast, the significant time, money and resources spent litigating a class action  
 3 claim that is ultimately sent to arbitration would not be recoverable.

4 In sum, having balanced the relative harms to Plaintiff and Amazon, the Court finds that  
 5 a stay is warranted until the arbitration question is more conclusively resolved. While the  
 6 probability of certiorari and reversal are not inordinately high, the *Rittman* dissent indicates that  
 7 a reasonable possibility exists. Thus, considering these probabilities alongside the relatively  
 8 high harm to Amazon if a stay is denied compared to the relatively low harm to Plaintiff if a  
 9 stay is granted, the balance of the equities tips in favor of Amazon. Finally, while the Court  
 10 finds the public interest factor less relevant here, it notes that the interests of judicial economy,  
 11 as well as the novelty of the question before the Supreme Court, also weigh in favor of a stay.  
 12

#### 13 **E. Length of Stay**

14 Amazon requests that the Court extend the stay until the final resolution of *Waithaka v.*  
 15 *Amazon.com, Inc., et al.* (1st Cir. No. 19-1848), **and** *Rittmann v. Amazon.com, Inc., et al.* (9th  
 16 Cir. No. 19-35381). *See* Dkt. #84-1 at 1. However, Amazon has not yet filed its certiorari  
 17 petition in *Waithaka*. *See* Dkt. #90 at 2. Considering that the disposition of the *Rittman* petition  
 18 directly implicates the probability that *Waithaka* will be granted, and visa versa, the Court will  
 19 extend the stay until the final resolution of *Waithaka* **or** *Rittman*, but not both. Should Amazon  
 20 seek to extend the stay until both are resolved, it may seek such relief at a later time.  
 21

#### 22 **IV. CONCLUSION**

23 Having reviewed Defendants' motion, Plaintiff's response, and the remainder of the  
 24 record, the Court GRANTS Defendants' Motion to Extend Stay, Dkt. #84, and ORDERS as  
 25 follows:  
 26

ORDER GRANTING DEFENDANTS'  
 MOTION TO EXTEND STAY- 15

1 (1) This matter is stayed until the final resolution of *Waithaka v. Amazon.com, Inc., et*  
2 *al.* (1st Cir. No. 19-1848), or *Rittmann v. Amazon.com, Inc., et al.* (9th Cir. No. 19-35381),  
3 whichever occurs first;

4 (2) Defendants shall notify the Court in writing, within ten days of any disposition of  
5 its petitions for certiorari by the Supreme Court.  
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8 IT IS SO ORDERED.

9 Dated this 30<sup>th</sup> day of November, 2020.  
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13 RICARDO S. MARTINEZ  
14 CHIEF UNITED STATES DISTRICT JUDGE  
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